



STATE OF WISCONSIN

Senate Journal

Ninety–Fifth Regular Session

10:00 A.M.

TUESDAY, March 6, 2001

The Senate met.

The Senate was called to order by Senator Fred Risser.

The roll was called and the following Senators answered to their names:

Senators Baumgart, Breske, Burke, Chvala, Cowles, Darling, Decker, Ellis, Erpenbach, Farrow, S. Fitzgerald, George, Grobschmidt, Hansen, Harsdorf, Huelsman, Jauch, A. Lasee, Lazich, M. Meyer, Moore, Panzer, Plache, Risser, Robson, Roessler, Rosenzweig, Shibilski, Welch, Wirch and Zien – 31.

Absent – Senators Moen and Schultz – 2.

The Senate stood for a moment of silent meditation.

The Senate remained standing and Senator Burke led the Senate in the pledge of allegiance to the flag of the United States of America.

LEAVES OF ABSENCE

Senator Chvala, with unanimous consent, asked that Senator Moen be granted a leave of absence for today's session.

Senator Panzer, with unanimous consent, asked that Senator Schultz be granted a leave of absence for today's session.

INTRODUCTION AND REFERENCE OF RESOLUTIONS AND JOINT RESOLUTIONS

Read and referred:

Senate Joint Resolution 25

Relating to: the life and public service of Blair L. Testin.

By Senators Wirch, Grobschmidt, Risser, Ellis, Burke, Breske, Cowles, Darling, Decker, Erpenbach, Farrow, Huelsman, Lazich, Moen, Plache and Roessler; cosponsored by Representatives Vrakas, Black, Ladwig, Plale, Albers, Berceau, Bock, Boyle, Coggs, Freese, Gronemus, Gunderson, Hahn, Huber, Jensen, Jeskewitz, Krawczyk, Lassa, J. Lehman, Lippert, Loeffelholz, D. Meyer, Miller, Montgomery, Musser, Olsen, Ott, Owens, Plouff, Ryba, Schneider, Shilling, Townsend, Travis, Turner, Wade and Wood.

To committee on **Senate Organization**.

Senate Joint Resolution 26

Relating to: proclaiming April as Child Abuse Prevention Month.

By Senators Roessler, Baumgart, Burke, Decker, Grobschmidt, A. Lasee, Plache, Risser, Rosenzweig, Erpenbach and Cowles; cosponsored by Representatives Krug, Kestell, Lassa, Berceau, Bies, Bock, Coggs, Friske, Hahn, Hebl, Jeskewitz, Krawczyk, Kreuser, Ladwig, La Fave, J. Lehman, Lippert, McCormick, D. Meyer, Miller, Musser,

Olsen, Owens, Pettis, Plouff, Pocan, Rhoades, Sinicki, Starzyk, Staskunas, Suder, Underheim, Urban, Wade, Wasserman and Young.

To committee on **Senate Organization**.

Senate Joint Resolution 27

Relating to: proclaiming the month of May as "Community Action Month" in the state of Wisconsin.

By Senators Wirch, Roessler, Burke, Shibilski, Schultz, Moen, Rosenzweig, Erpenbach, Risser, Hansen, Decker, Baumgart, Darling, A. Lasee and Chvala; cosponsored by Representatives Olsen, Krug, Ladwig, Shilling, Krawczyk, Turner, Miller, Wade, Gronemus, Bock, Ryba, Loeffelholz, Albers, Sherman, Coggs, Musser, Jeskewitz, Johnsrud, Owens, Plouff, Reynolds, Lippert, Rhoades, Townsend, Huber, Vrakas, Ott, Lassa, Kreuser, Friske, Gunderson, Underheim, Freese, J. Lehman, Berceau, Riley, Sykora and Hubler.

To committee on **Senate Organization**.

Senator Robson, with unanimous consent, asked that the Senate recess until 11:58 A.M..

10:12 A.M.

RECESS

11:58 A.M.

The Senate reconvened.

Senator Risser in the chair.

INTRODUCTION, FIRST READING AND REFERENCE OF BILLS

Read first time and referred:

Senate Bill 73

Relating to: eliminating school district revenue limits and making an appropriation.

By Senator Risser; cosponsored by Representatives Boyle, J. Lehman, Young, Reynolds, Turner, Black, Pocan, Ryba, Coggs, Miller, Berceau and Balow.

To committee on **Education**.

Senate Bill 74

Relating to: excusing persons from jury service.

By Senators Risser and Schultz; cosponsored by Representatives Carpenter, J. Lehman, Ryba, Pettis, Staskunas and Albers.

To committee on **Judiciary, Consumer Affairs, and Campaign Finance Reform**.

Senate Bill 75

Relating to: fees charged by notary publics.

By Senators Risser, Schultz and Huelsman; cosponsored by Representatives Musser, Ryba and Pettis.

To committee on **Universities, Housing, and Government Operations**.

Senate Bill 76

Relating to: an income and franchise tax credit for small businesses that pay a guarantee fee.

By Senators Moore, Robson, Burke, Roessler, George, Schultz, Darling and Rosenzweig; cosponsored by Representatives Seratti, Pocan, Turner, Morris-Tatum, Miller, Schooff, Plale, Townsend, Berceau, Lassa, Riley and Leibham.

To committee on **Universities, Housing, and Government Operations**.

REPORT OF COMMITTEES

The committee on **Labor and Agriculture** reports and recommends:

Assembly Bill 7

Relating to: storage and handling of anhydrous ammonia, creating an exemption from civil liability, and providing a penalty.

Concurrence.

Ayes, 5 – Senators Hansen, Decker, Baumgart, A. Lasee and Harsdorf.

Noes, 0 – None.

DREW, WILLIAM R., of Milwaukee, as a member of the State Fair Park Board, to serve for the term ending May 1, 2004.

Confirmation.

Ayes, 5 – Senators Hansen, Decker, Baumgart, A. Lasee and Harsdorf.

Noes, 0 – None.

MCKEITHAN, PATRICIA B., of Milwaukee, as a member of the State Fair Park Board, to serve for the term ending May 1, 2005.

Confirmation.

Ayes, 5 – Senators Hansen, Decker, Baumgart, A. Lasee and Harsdorf.

Noes, 0 – None.

WILSON, R. DOUGLAS, of Shawano, as a member of the State Fair Park Board, to serve for the term ending May 1, 2003.

Confirmation.

Ayes, 5 – Senators Hansen, Decker, Baumgart, A. Lasee and Harsdorf.

Noes, 0 – None.

Senate Bill 48

Relating to: creating an optional holiday for state employees to observe the birthday of Cesar E. Chavez.

Passage.

Ayes, 3 – Senators Hansen, Decker and Baumgart.

Noes, 2 – Senators A. Lasee and Harsdorf.

David Hansen
Chairperson

PETITIONS AND COMMUNICATIONS

State of Wisconsin

Department of Workforce Development

February 27, 2001

The Honorable, The Senate:

Pursuant to Section 109.12(2) and (3) of Wisconsin Statutes I hereby submit the department's calendar year 2000 annual report on the administration and enforcement of Sections 109.07 and 109.075 of Wisconsin Statutes. The report contains three sections. The first section lists all businesses in 2000 that notified the department of planned business closings/mass layoffs, the location of the business, type of industry involved, number of persons affected and date(s) of scheduled dislocations. The second section lists complaints pending before the department's Equal rights Division, at the beginning of 2000. It includes the complaints received during calendar year 2000, alleging violations of Wisconsin's business closing/mass layoff notification law. This section lists the name of the business, location, date the department received the complaint, date the investigation was completed (if any), whether a violation was documented and the current status and/or outcome of the case.

The third section lists similar information for any complaints received by the department in 2000 and 2001, alleging violations that an employer failed to provide advance notification to affected employees of a cessation of health insurance benefit plans. No complaints were received in 2000 and so far one complaint has been received in 2001. The department is actively investigating this complaint at the time of this report.

On January 1, 2000, 12 business closing cases from prior years remained pending. Two of these cases remained in investigation. The Department completed both of the investigations by March 6, 2000. Both of those determinations were appealed. By May 16, 2000, the department processed both of those appeals as well as two more appeals that were still pending on January 1, 2000. Currently the Department of Justice has eight cases pending litigation to resolve those matters. The remaining four cases were closed with no violations having been found.

In 2000 the Equal Rights Division received 26 complaints alleging violations of the plan closing and mass layoff notification law. In calendar year 1999, the department received 10 complaints alleging violations of the Plant Closing law. The Equal Rights Division found violations in two of the 21 cases on which it completed investigation in 2000. Each of the three violations were referred to the Department of Justice for litigation in court. The department, in cooperation with the Department of Justice settled a fourth case against U.S. Leather, (listed as the Pfister & Vogel/Gebhardt cases), resulting in \$763,541.40 in increased wages paid to 510 workers. Five cases that were received in 2000 remain under investigation at this time.

If you have questions regarding this report, please contact the Administrator of the Equal Rights Division, Sheehan Donoghue at 266-0946, or me.

Sincerely,

JENNIFER REINERT
Secretary

**State of Wisconsin
Ethics Board**

March 6, 2001

The Honorable, The Senate:

The following lobbyists have been authorized to act on behalf of the organizations set opposite their names.

For more detailed information about these lobbyists and organizations and a complete list of organizations and people authorized to lobby the 2001 session of the legislature, visit the Ethics Board's web site at <http://ethics.state.wi.us/>

Anderson, Jay G.	Strategic Environmental Solutions International Corp.
Beckord, John	Forward Janesville Inc
Bonaria, Jeri	WAVE Educational Fund
Christianson, Peter C	Motion Picture Association of America Inc
Croysdale, Donald	American Subcontractors Association of Greater Milwaukee Inc
Dilweg, Sean	Wisconsin Education Association Council
Elkin, Vicki	Gathering Waters Inc
Essie, Patrick	Wisconsin Education Association Council
Hanson, Thomas	Wisconsin Bear Hunters Association
Hottenroth, Theresa M	Columbia–St. Marys Inc
Irizarry, Jocelyn	Strategic Environmental Solutions International Corp.
Leitch, Laura J	Columbia–St. Marys Inc
Mitchell, Brian	Wisconsin Underground Contractors Association
Mitchell, Brian	Old Republic Surety Group
Mueller, H Carl	Journal Communications Inc
Nett, Jeffrey	Wisconsin Troopers Association, Inc
Plautz, Jolene	Upper Midwest Rechargers Association
Russell, Christine	Wisconsin Physicians Service Insurance Corporation (WPS)
Ullrich, Dan	WAVE Educational Fund
Vaughan, Michael	Wisconsin Muck Farmers Association
Westrick, Paul	Columbia–St. Marys Inc
Wolff, Sara	Orphan Medical
Wood, Robert	Wisconsin Physicians Service Insurance Corporation (WPS)

Also available from the Wisconsin Ethics Board are reports identifying the amount and value of time state agencies have spent to affect legislative action and reports of expenditures for lobbying activities filed by organizations that employ lobbyists.

Sincerely,
 ROTH JUDD
 Director

ADVICE AND CONSENT OF THE SENATE

**State of Wisconsin
 Office of the Governor**

February 28, 2001
 The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint DUBE, PHYLLIS J., of Madison, as Secretary of the Department of Health and Family Services, to serve for the term ending at the pleasure of the Governor.

Sincerely,
 SCOTT MCCALLUM
 Governor

Read and referred to committee on **Health, Utilities, Veterans and Military Affairs.**
**State of Wisconsin
 Office of the Governor**

February 28, 2001
 The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint FARROW, MARGARET A., of Pewaukee, as Lieutenant Governor, pursuant to Article XIII, section 10 (2) of the Wisconsin Constitution.

Sincerely,
 SCOTT MCCALLUM
 Governor

Read and referred to committee on **Universities, Housing, and Government Operations.**
**State of Wisconsin
 Office of the Governor**

February 28, 2001
 The Honorable, The Senate:

I am pleased to nominate and with the advice and consent of the Senate, do appoint HARSDORF, JAMES E., of Beldenville, as Secretary of the Department of Agriculture, Trade and Consumer Protection, to serve for the term ending at the pleasure of the Governor.

Sincerely,
 SCOTT MCCALLUM
 Governor

Read and referred to committee on **Labor and Agriculture.**

Senator Burke, with unanimous consent, asked all the appointments be taken up en masse.

BAUMBACH, JERRY, of Sun Prairie, as a member of the Public Defender Board, to serve for the interim term ending May 1, 2002.

Read.

BERKOS, DANIEL M., of Mauston, as a member of the Public Defender Board, to serve for the term ending May 1, 2002.

Read.

HARRIS, ROBERTA A., of Milwaukee, as a member of the Public Defender Board, to serve for the interim term ending May 1, 2000 and for the full term ending May 1, 2003.

Read.

HERTEL, HARRY R., of Eau Claire, as a member of the Public Defender Board, to serve for the term ending May 1, 2003.

Read.

The question was: Confirmation?

The ayes and noes were required and the vote was: ayes, 31; noes, 0; absent or not voting, 2; as follows:

Ayes – Senators Baumgart, Breske, Burke, Chvala, Cowles, Darling, Decker, Ellis, Erpenbach, Farrow, S. Fitzgerald, George, Grobschmidt, Hansen, Harsdorf, Huelsman, Jauch, A. Lasee, Lazich, M. Meyer, Moore, Panzer, Plache, Risser, Robson, Roessler, Rosenzweig, Shibilski, Welch, Wirch and Zien – 31.

Noes – None.

Absent or not voting – Senators Moen and Schultz – 2.

Confirmed.

**REFERRALS AND RECEIPT OF
COMMITTEE REPORTS CONCERNING
PROPOSED ADMINISTRATIVE RULES**

Senate Clearinghouse Rule 99–147

Relating to utilization reviews.

Submitted by Department of Regulation and Licensing.

Report received from Agency, March 1, 2001.

Referred to committee on **Health, Utilities, Veterans and Military Affairs**, March 6, 2001.

Senate Clearinghouse Rule 00–139

Relating to a rules committee.

Submitted by Department of Regulation and Licensing.

Report received from Agency, February 28, 2001.

Referred to committee on **Environmental Resources**, March 6, 2001.

The committee on **Universities, Housing, and Government Operations** reports and recommends:

Senate Clearinghouse Rule 00–142

Relating to home inspector examination and continuing education requirements.

No action taken.

Mark Meyer
Chairperson

**State of Wisconsin
Revisor of Statutes Bureau**

March 1, 2001

To the Honorable, the Senate:

The following rules have been published:

Clearinghouse Rules	Effective Date(s)
98–170	March 1, 2001
00–89	March 1, 2001
00–92	March 1, 2001
00–107	March 1, 2001
00–113	March 1, 2001
00–127	March 1, 2001
00–130	March 1, 2001
00–131	March 1, 2001

The following rule was omitted from previous report:

00–109	February 1, 2001
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Clearinghouse Rule 00–51 was listed in error in previous report.

Sincerely,
GARY L. POULSON
Deputy Revisor

MESSAGES FROM THE ASSEMBLY

By John A. Scocos, chief clerk.

Mr. President:

I am directed to inform you that the Assembly has adopted and asks concurrence in:

Assembly Joint Resolution 39

Assembly Joint Resolution 43

**MESSAGES FROM THE ASSEMBLY
CONSIDERED**

Assembly Joint Resolution 39

Relating to: the life and community service of Leo Frigo.

By Representatives Montgomery, Gard, Albers, Bies, Gunderson, Jeskewitz, Krawczyk, Kreuser, Ladwig, Lippert, Meyerhofer, Miller, Owens, Petrowski, Plouff, Rhoades, Ryba, Townsend, Vrakas and Wade; cosponsored by Senators Cowles, Hansen, Plache and Darling.

Read and referred to committee on **Senate Organization**.

Assembly Joint Resolution 43

Relating to: the life and public service of Blair L. Testin.

By Representatives Vrakas, Black, Ladwig, Plale, Albers, Berceau, Bock, Boyle, Coggs, Freese, Gronemus, Gunderson, Hahn, Huber, Jensen, Jeskewitz, Krawczyk, Lassa, J. Lehman, Lippert, Loeffelholz, D. Meyer, Miller, Montgomery, Musser, Olsen, Ott, Owens, Plouff, Ryba, Schneider, Shilling, Townsend, Travis, Turner, Wade and Wood; cosponsored by Senators Wirch, Grobschmidt, Risser, Ellis, Burke, Breske, Cowles, Darling, Decker, Erpenbach, Farrow, Huelsman, Lazich, Moen, Plache and Roessler.

Read and referred to committee on **Senate Organization**.

**SECOND READING AND AMENDMENTS
OF SENATE JOINT RESOLUTIONS AND
SENATE BILLS**

Senate Joint Resolution 2

Relating to: the right to fish, hunt, trap, and take game (first consideration).

Read a second time.

IN THE CHAIR

12:20 P.M.

Senator George in the Chair.

Senate amendment 1 to Senate substitute amendment 1 to **Senate Joint Resolution 2** offered by Senator Risser.

Senator Shibilski moved rejection of Senate amendment 1 to Senate substitute amendment 1 to **Senate Joint Resolution 2**.

The question was: Rejection of Senate amendment 1 to Senate substitute amendment 1 to **Senate Joint Resolution 2**?

The ayes and noes were demanded and the vote was: ayes, 29; noes, 2; absent or not voting, 2; as follows:

Ayes – Senators Baumgart, Breske, Burke, Chvala, Cowles, Darling, Decker, Ellis, Erpenbach, Farrow, S. Fitzgerald, Grobschmidt, Hansen, Harsdorf, Huelsman, Jauch, A. Lasee, Lazich, M. Meyer, Moore, Panzer, Plache, Robson, Roessler, Rosenzweig, Shibilski, Welch, Wirch and Zien – 29.

Noes – Senators George and Risser – 2.

Absent or not voting – Senators Moen and Schultz – 2.

Rejected.

Senator Baumgart, with unanimous consent, would like the staff comments from the Joint Legislative Council spread upon the journal.

They are as follows:

INTRODUCTION

This memorandum is in response to your request for my analysis of the potential effect of Senate Substitute

Amendment 1 to 2001 Senate Joint Resolution 2, on the ability of the state to continue its regulation of hunting, fishing, trapping and taking game. The Joint Resolution, as amended, proposes to create Wis. Const. art. I, s. 26, as follows: “The people have the right to fish, hunt, trap, and take game which shall be managed by law for public good.”

You have observed that the constitutional amendment, if adopted, could be used as the basis for a legal challenge to the constitutionality of existing or future statutes or administrative rules that regulate fish and game. Your concern is the extent to which challenges to fish and game regulations could potentially succeed. You have asked whether I believe that only occasional regulations that are substantially more restrictive than those in place today are likely to be found unconstitutional, or whether I believe that there is a potential for successful challenge to many of the fish and game regulations currently in place.

I cannot give a definitive, black-and-white answer to your question, because the constitutional language is brief, and does not spell out the specific legal consequences of that language. Judicial interpretation may eventually supply the answer to your question, but the outcome of court cases is difficult to predict.

However, courts frequently resort to a variety of methods to interpret constitutional provisions, and a review of those methods can suggest the outcome of a challenge to hunting or fishing regulations based on the proposed right. I have reviewed a number of these methods of interpretation, and concluded that a successful challenge to hunting and fishing regulations would most likely relate to future regulations that are much more restrictive than those currently in place. I believe it is much less likely that the regulations in place today could be successfully challenged, and I have summarized my conclusion in this memorandum. My conclusion also appears to be consistent with the intent of the supporters of the constitutional amendment—I am unaware of any arguments in legislative debate on the constitutional amendment that it should be the vehicle for overturning any current fish and game regulations.

Throughout this memorandum, for convenience, I will refer to “hunt and fish” as a description of all activities that are subject to the proposed constitutional right. The substitute amendment has been recommended by the Senate Committee on Environmental Resources and is scheduled for debate in the Senate on March 6, 2001. This is the first consideration of the Joint Resolution.

For further information, you may wish to review my Wisconsin Legislative Council Information Memorandum 00-7, *Laws on Hunting, Fishing and Trapping* (December 28, 2000).

CURRENT REGULATION OF FISH AND GAME

This section of the memorandum briefly describes the current law on hunting and fishing regulation. In particular, this discussion shows the great deference that courts currently give to state hunting and fishing regulation. This discussion is included in the memorandum because it is these legal principles that are potentially subject to change as a result of adopting the Joint Resolution.

The legal title to all wild animals is vested in the state by s. 29.011, Stats.:

29.011 Title to wild animals. (1) The legal title to, and the custody and protection of, all wild animals within this state is vested in the state for the purposes of regulating the enjoyment, use, disposition, and conservation of these wild animals.

(2) The legal title to a wild animal or carcass, taken or reduced to possession in violation of this chapter, remains in the state. The title to a wild animal or carcass, lawfully acquired, is subject to the condition that upon the violation of this chapter relating to the possession, use, giving, sale, barter or transportation of a wild animal or carcass by the owner, the ownership shall revert, as a result of the violation, to the state.

In other words, legal title to wild game only passes to an individual when the game is legally taken. Until that time, title remains with the state, and the state can confiscate any game unlawfully taken. This declaration of sovereignty is common to all 50 states and is the statutory expression of the legal principle that dates back to the early days of the English monarchy.

Although it is not so described in the statutes, the state’s title to wild animals is often described in court cases as a trust for the benefit of the people. The Legislature, as the representative of the people, is charged with the authority to manage this trust. The Legislature has delegated the administrative responsibilities regarding wild animals primarily to the DNR. Most of the statutory authority of the DNR with respect to wild animals is contained in ch. 29, Stats

The basic authority of the DNR to regulate fish and game is set forth in s. 29.014 (1), Stats., which provides as follows:

29.014 (1) The department shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

There are very few appellate court cases in Wisconsin regarding fish and game regulation. However, the Wisconsin case of *Krenz v. Nichols*, decided in 1928, is typical of the state court’s approach to fish and game cases. In this case, the Wisconsin Supreme Court reviewed the state’s regulation of muskrat farms. In its decision in favor of the state, the court gave great deference to the Legislature in its regulation of fish and game.

As trustee for the people, the state may conserve wild life and regulate or prohibit its taking in any reasonable way it may deem necessary for the public welfare, so long as it does not violate any organic law of the land.

...

It is now generally recognized that valuable wild animal life would soon be exterminated if the state should fail to conserve it and aid in its reproduction. Whenever the state has done so without trenching on private rights protected by the Constitution, such acts have been almost uniformly upheld.

...

Nearly every conceivable regulation for the propagation, conservation, taking, and disposal of fish and game has been upheld where no constitutional objections have stood in the way. Generally, courts have given very liberal construction to such statutes, to the end that the public welfare should be subserved. [222 N.W. 300, 303, 197 Wis. 394 (1928).]

CONSTITUTIONAL INTERPRETATION

Like statutes, constitutions are subject to judicial interpretation. Some of the tools used by courts in constitutional cases are known as “rules of interpretation.” These rules are similar to the rules for statutory interpretation, but have other dimensions due to the constitutional context.

It is important to note that these are not “rules” in the conventional sense of that word. This is rather a term that lawyers use loosely to describe what could more accurately be described as an approach to analyzing the constitutional issue. Courts are not bound to follow these rules, although these rules are commonly applied in court decisions.

The express purpose of these rules of interpretation is to allow courts to implement the will of the drafters of a constitutional provision and the will of the voters who ratified it. To the extent that a court interprets a constitutional provision, it may choose not to follow the literal meaning of that provision. The flexibility that courts have when applying the rules of interpretation potentially puts legislators and electors in the position of voting for a constitutional amendment when it cannot be known how courts might ultimately decide a case arising under the proposed amendment.

The following are some examples of constitutional rules of interpretation:

- ***Unless a provision is ambiguous, the plain meaning prevails.*** If there is no ambiguity, the court may choose not to consider any evidence outside of the constitutional language at issue. Senate Substitute Amendment 1 does not appear to be ambiguous, in the sense that it can be read in two different ways. However, Senate Substitute Amendment 1 is vague in the sense that it does not precisely define the scope of the right. This may lead a court to claim that it is ambiguous (because ambiguity and vagueness are frequently mixed), and resort thereafter to other evidence of meaning.
- ***Avoid absurd results.*** The issue of absurd results often arises when fact situations are presented to the court that were not envisioned by the drafters, or when there is a conflict between constitutional provisions.
- ***Extrinsic evidence related to adoption.*** Courts may review the legislative history surrounding adoption of a constitutional provision to determine what was intended by the Legislature.
- ***Extrinsic evidence based on legislation on the same subject.*** Courts may look to legislation interpreting constitutional provisions or to legislation that is adopted contemporaneous to the constitutional provision to determine intent.

COMMENTS ON 2001 SENATE JOINT RESOLUTION 2

The following are my observations regarding potential judicial interpretation of Senate Substitute Amendment 1 to Senate Joint Resolution 2. I have expressed my observations in terms of how the substitute amendment text or certain evidence related to the substitute amendment might affect the decision of a court. I have not assumed that a court might make an unexpected or unusual decision, although this is always a possibility.

- ***Plain meaning of the substitute amendment.*** The substitute amendment clearly does not create an absolute right to hunt and fish. The “right to fish, hunt, trap and take game” is qualified in the substitute amendment by the language that follows: “which shall be managed by law for the public

good.” Although the substitute amendment creates a right, at the same time it directs the Legislature and its agent, the Department of Natural Resources, to manage that right. Therefore, the language in the substitute amendment clearly acknowledges that regulation of hunting, fishing, trapping and taking game will continue.

- ***Absurd results.*** Courts refer to rights created in the constitution as “fundamental rights.” A court, in reviewing legislation that restricts a fundamental right, will not apply a presumption of constitutionality to the legislation. The state, to defend the regulation, must show that the regulation is intended to achieve a compelling governmental purpose when there is not a less restrictive alternative available. This would make it very difficult for the state to defend most fish and game regulation. However, the substitute amendment ***requires*** management of the right for the public good. It would be an absurd result for a court to acknowledge the mandate to manage the right, and make it extremely difficult for the state to regulate. It would be more likely for a court to continue to apply a standard of reasonableness to any regulation, but with something less than the almost total deference given to such regulation under current law.
- ***Additional absurd results.*** As noted in *Krenz*, the ongoing availability of wild animals to hunt and fish depends on state regulation to conserve the fish and game. It would be an absurd result for a court to hold that the substitute amendment negates a substantial amount of hunting and fishing regulation, which could have the effect of destroying the very activity that the substitute amendment was intended to protect.
- ***Management is required for “the public good.”*** This choice of language is important. The management authorized in Senate Substitute Amendment 1 is for the broad purpose of the “public good,” which could include the conservation of wild animals, as well as any other issues of public health, safety or welfare. This language should allow courts to approve regulations that are based on social issues, rather than on conservation and game management. Social regulations are common in current fish and game regulations. For example, the nine-day deer gun season has no basis in deer herd management, but rather is based on tradition and public preference—a “social” regulation.
- ***Judicial precedent.*** Courts strongly tend to follow precedent in constitutional cases. The adherence to precedent increases the certainty that is provided by law. The *Krenz* case, cited above, is part of the Wisconsin precedent in fish and game law. This precedent suggests that courts are likely to make only modest changes to the standards for review of fish and game regulation, in that a substantial degree of judicial deference continues to be consistent with Substitute Amendment 1.
- ***Legislative history.*** I am unaware of any legislative history suggesting that the Joint Resolution is meant to restrict current fish and game regulation.
- ***Contemporaneous legislation.*** The Legislature is not currently considering any legislation to substantially curtail current hunting or fishing regulations. Assembly Bill 98, introduced by Representative Wood, expands the opportunity to catch fish with a bow and arrow near a roadway, but

that bill is narrowly focused. Senate Bill 45, introduced by Senator Moen, would prohibit the hunting of mourning doves. The outcome of legislative debate on Senate Bill 45 may suggest in part what is the Legislature's intent regarding the constitutional amendment.

If I can provide further information on this subject, please feel free to contact me.

Senate amendment 2 to Senate substitute amendment 1 to **Senate Joint Resolution 2** offered by Senator Shibilski.

Senator Chvala, with unanimous consent, asked that **Senate Joint Resolution 2** be placed at the foot of the calendar of March 6, 2001.

Senate Joint Resolution 22

Relating to: the life and public service of Daniel T. "Tom" Kelley.

Read.

Adopted.

Senate Joint Resolution 23

Relating to: the life and public service of Helmar A. Lewis.

Read.

Adopted by unanimous rising vote.

Senate Joint Resolution 24

Relating to: honoring and commending the devoted public service of Sue Ann Thompson.

Read.

Senate amendment 1 to **Senate Joint Resolution 24** offered by Senator Erpenbach.

The question was: Adoption of Senate amendment 1 to **Senate Joint Resolution 24**?

Adopted.

The question was: Adoption of **Senate Joint Resolution 24**?

Adopted.

Senator Rosenzweig, with unanimous consent, asked to be added as a coauthor of **Senate Joint Resolution 23**.

Senator Rosenzweig, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 4**.

Senator Rosenzweig, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 25**.

Senator Rosenzweig, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 26**.

Senator Rosenzweig, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 30**.

Senator Rosenzweig, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 31**.

Senator Robson, with unanimous consent, asked to be added as a coauthor of **Senate Joint Resolution 24**.

Senate Bill 6

Relating to: lamps emitting a flashing red or white light on bicycles and motor bicycles.

Read a second time.

Ordered to a third reading.

Senator Burke, with unanimous consent, asked that the bill be considered for final action at this time.

Senate Bill 6

Read a third time and passed.

Senate Bill 10

Relating to: motorists approaching certain authorized emergency vehicles or tow trucks stopped near a highway and providing a penalty.

Read a second time.

Senate substitute amendment 1 to **Senate Bill 10** offered by Senator Burke.

The question was: Adoption of Senate substitute amendment 1 to **Senate Bill 10**?

Adopted.

Ordered to a third reading.

Senator Chvala, with unanimous consent, asked that the bill be considered for final action at this time.

Senate Bill 10

Read a third time and passed.

Senate Bill 20

Relating to: universal service fund surcharges on customer bills by telecommunications providers.

Read a second time.

Senator Chvala, with unanimous consent, asked that **Senate Bill 20** be referred to joint committee on **Information Policy and Technology**.

Senate Bill 21

Relating to: universal service fund surcharges on customer bills by commercial mobile radio service providers.

Read a second time.

Senator Chvala, with unanimous consent, asked that **Senate Bill 21** be referred to joint committee on **Information Policy and Technology**.

Senate Bill 40

Relating to: prohibiting certain telephone solicitations, requiring the registration of telephone solicitors, requiring the exercise of rule-making authority, making an appropriation, and providing penalties.

Read a second time.

Senator Roessler, with unanimous consent, asked to be withdrawn as a coauthor of **Senate Bill 40**.

Senator Roessler, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 27**.

Senator Roessler, with unanimous consent, asked to be added as a coauthor of **Senate Bill 14**.

Senator Burke, with unanimous consent, asked that **Senate Bill 40** be referred to the Joint Committee on **Finance**.

Senate Bill 58

Relating to: the regulation of snowmobile rail crossings.

Read a second time.

Senator Zien, with unanimous consent, asked to be added as a coauthor of **Senate Bill 10**.

Senator Darling, with unanimous consent, asked to be added as a coauthor of **Senate Joint Resolution 26**.

Senator Darling, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 31**.

Senator Hansen, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 4**.

Senator Hansen, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 26**.

Ordered to a third reading.

Senator Burke, with unanimous consent, asked that the bill be considered for final action at this time.

Senate Bill 58

Read a third time and passed.

**SECOND READING AND AMENDMENTS
OF ASSEMBLY JOINT RESOLUTIONS AND
ASSEMBLY BILLS**

Assembly Joint Resolution 4

Relating to: commending Dick Bennett on his career, accomplishments, and contributions to Wisconsin basketball.

Read.

Concurred in.

Assembly Joint Resolution 25

Relating to: the life and public service of Joseph L. Looby.

Read.

Concurred in by unanimous rising vote.

Assembly Joint Resolution 26

Relating to: the life and public service of Sister Thomas More Bertels.

Read.

Concurred in.

Assembly Joint Resolution 27

Relating to: congratulating Marlene A. Cummings for her long-term services and wishing her well in her future endeavors.

Read.

Senator Welch, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 27**.

Senator Darling, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 27**.

Senator Moore, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 29**.

Senator Moore, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 30**.

Senator Moore, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 31**.

Senator Jauch, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 29**.

Senator Jauch, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 30**.

Senator Robson, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 4**.

Senator Robson, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 25**.

Senator Robson, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 27**.

Senator Robson, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 29**.

Senator Cowles, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 29**.

Senator Grobschmidt, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 4**.

Senator Grobschmidt, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 25**.

Senator Grobschmidt, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 31**.

Senator Grobschmidt, with unanimous consent, asked to be added as a coauthor of **Senate Bill 6**.

Senator Grobschmidt, with unanimous consent, asked to be added as a coauthor of **Senate Bill 10**.

Senator George, with unanimous consent, asked to be added as a cosponsor of **Assembly Joint Resolution 27**.

The question was: Shall **Assembly Joint Resolution 27** be concurred in?

Concurred in.

Assembly Joint Resolution 29

Relating to: commending Joe Leean for his years of public service in the Wisconsin state senate and the department of health and family services.

Read.

Concurred in.

Assembly Joint Resolution 30

Relating to: commemorating the distinguished record and public service of Cate Zeuske.

Read.

Concurred in.

Assembly Joint Resolution 31

Relating to: honoring the life of Ben Barkin.

Read.

Concurred in.

Senate Joint Resolution 2

Relating to: the right to fish, hunt, trap, and take game (first consideration).

Read a second time.

Senator Baumgart moved rejection of Senate amendment 2 to Senate substitute amendment 1 to **Senate Joint Resolution 2**.

The question was: Rejection of Senate amendment 2 to Senate substitute amendment 1 to **Senate Joint Resolution 2**?

The ayes and noes were demanded and the vote was: ayes, 16; noes, 15; absent or not voting, 2; as follows:

Ayes – Senators Baumgart, Breske, Burke, Chvala, Decker, Erpenbach, George, Grobschmidt, Hansen, Jauch, M. Meyer, Moore, Plache, Risser, Robson and Wirch – 16.

Noes – Senators Cowles, Darling, Ellis, Farrow, S. Fitzgerald, Harsdorf, Huelsman, A. Lasee, Lazich, Panzer, Roessler, Rosenzweig, Shibilski, Welch and Zien – 15.

Absent or not voting – Senators Moen and Schultz – 2.

Rejected.

The question was: Adoption of Senate substitute amendment 1 to **Senate Joint Resolution 2**?

Adopted.

Ordered to a third reading.

Senator Burke, with unanimous consent, asked that the joint resolution be considered for final action at this time.

Senate Joint Resolution 2

Read a third time.

The ayes and noes were required and the vote was: ayes, 31; noes, 0; absent or not voting, 2; as follows:

Ayes – Senators Baumgart, Breske, Burke, Chvala, Cowles, Darling, Decker, Ellis, Erpenbach, Farrow, S. Fitzgerald, George, Grobschmidt, Hansen, Harsdorf, Huelsman, Jauch, A. Lasee, Lazich, M. Meyer, Moore, Panzer, Plache, Risser, Robson, Roessler, Rosenzweig, Shibilski, Welch, Wirch and Zien – 31.

Noes – None.

Absent or not voting – Senators Moen and Schultz – 2.

Adopted.

Senator Hansen, with unanimous consent, asked to be added as a coauthor of **Senate Joint Resolution 2**.

Senator Chvala, with unanimous consent, asked that all action be immediately messaged to the Assembly.

ANNOUNCEMENTS, ADJOURNMENT HONORS, AND REMARKS UNDER SPECIAL PRIVILEGE

Senator Erpenbach, with unanimous consent, asked that when the Senate adjourns, it do so in honor of the Middleton and Waunakee girls basketball teams who are on the way to state play offs.

Senator Panzer, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Senator Farrow on her appointment as Lieutenant Governor.

Senator Zien, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Cadot High School Wrestling Team for being number one at state.

Senator Zien, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Stratford High School Wrestling Team for being number two at state.

Senator Zien, with unanimous consent, asked that when the Senate adjourns, it do so in honor of U.W. Eau Claire Men's and Women's basketball teams both having lost to the number 1 rated teams in the nation.

Senator Zien, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Aldo Leopold and his kindred spirit Senator Baumgart.

Senator Robson, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Janesville Parker girls basketball team on their going to state.

Senator Meyer, with unanimous consent, asked that when the Senate adjourns, it do so in honor of the U.W. Systems and U.W. Days.

Senator Shibilski, with unanimous consent, asked that when the Senate adjourns, it do so in honor of Adams Friendship Green Devils girls basketball team going to state.

ADJOURNMENT

Senator Chvala, with unanimous consent, asked that the Senate adjourn until Thursday, March 8 at 10:00 A.M..

Adjourned.

1:46 P.M.

CHIEF CLERK'S REPORT

The Chief Clerk records:

Senate Joint Resolution 18

Senate Joint Resolution 20

Deposited in the office of the Secretary of State on March 5, 2001.

MOTIONS UNDER SENATE RULE 98 AND JOINT RULE 7

for the Month of February 2001

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Rebecca Anderson, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Schultz, for Gordon A. Anderson, on

the occasion of his retirement and honoring his 30 years of dedicated service with the Wisconsin Legislative Council.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Farrow, for Sonya Barger, on the occasion of having dedicated 25 years of service to the Greenfield School District.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Farrow, for Patricia Bartlett, on the occasion of her retirement after 13 years of dedicated work with the residents of the Village of Sussex.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Fitzgerald, for the Beaver Dam Charter School, on the occasion of recognizing the achievements of all those who are a part of the school and being chosen as the Beaver Dam Chamber Entity of the Year Award 2001.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Rosenzweig, for Julia Rose Bickler, on the occasion of earning and attaining the Girl Scout Gold Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Ellis, for Charles E. Bluett, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Seth Bredeson, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Schultz, for Mr. Tom Casey, on the occasion of his 15 years of service as the Dean of the Frank Lloyd Wright School of Architecture.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Roessler, for Derek Trevor Core, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Megan Coyne, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Wirch, for Shirley Davidson, on the occasion of her dedicated service to the citizens of the town of Bristol.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Farrow, for Dale Doman, on the occasion of his retirement after 26 years of dedicated service as Police Captain for the Village of Elm Grove.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Katie Eberhardy, on the occasion of earning and attaining the Girl Scout Gold Award.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Darling, for Robb Edwards, on the occasion of his retirement after 28 years as a dedicated radio broadcaster at 2 stations WUWM and WTMJ.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Rosenzweig, for Jonathan James Eggers, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Jauch, for Allison Gonske, on the occasion of being chosen the 2001 Wisconsin Fairest of the Fairs.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lasee, for Douglas Haltinner, on the

occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Jesscia Marie Holmes, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Jacquelyn Rose Hunter, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Panzer, for Edward H. Johnson, on the occasion of receiving the National Court Reporters Association Legislative Activist of the Year Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Burke, for Officer Stewart R. Johnson, on the occasion of his retirement after 30 years of dedication to the City of Milwaukee.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Panzer, for Orville Kern, on the occasion of his retirement after 28 years of public service.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lasee, for Leroy Klein, on the occasion of his retirement from the Door County Sheriff's Department after 25 years of dedicated service.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Betsy Konkol, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Panzer, for Jerome (Jerry) Krantz, on the occasion of celebrating 50 years with the Allenton Volunteer Fire Department.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Ana Elizabeth Krebs, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for Chaplain, Lt. Col. Carl H. Krueger, Jr., on the occasion of being honored as "Veteran of the Year".

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Shibilski, for the Marshfield News-Herald, on the occasion of being selected the 2001 Firm of the Year.

A certificate of congratulations by the Wisconsin Legislature on the motion of Senator Cowles, for Jean Melchert, on the occasion of her 45 years of service to the Seymour School Board.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Baumgart, for New Hope United Methodist Church, on the occasion of celebrating their 150th Anniversary.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Roessler, for the Bank of Oakfield, on the occasion of celebrating their 100th Anniversary.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator George, for Mayor Tom Olsen and the citizens of the City of Beaver Dam, on the occasion of establishing a legacy of dedication to justice.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Lasee, for Andrew M. Pappas, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Erpenbach, for Jared Albert Policastro, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Rabbi Dovid and Rebetzin Fagie Rapoport, on the occasion of years of committed service to the Milwaukee Jewish community.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Steven Reese, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Grobschmidt, for Father Herbert Schubert, on the occasion of his retirement after serving St. Adalbert Parish for over 25 years.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Breske, for Greg and Eileen Swanberg, owners of the Bavarian Inn in Manitowish Waters, Wisconsin, on the occasion of being named Outstanding Restaurateur of the Year for the Wisconsin Restaurant Association Northwoods Chapter for a second time.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Rosenzweig, for Robert Mark Syre, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of congratulations by the Wisconsin Senate on the motion of Senator Chvala, for Jacki Waddell, on the occasion of earning and attaining the rank of the Girl Scout Gold Award.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Darling, for Brian Wiehr, on the occasion of earning and attaining the rank of the Eagle Scout Award.

A certificate of commendation by the Wisconsin Legislature on the motion of Senator Darling, for Youth Art Month, on the occasion of all the Menomonee Falls student artists programs & displays throughout Youth Art Month.

A certificate of commendation by the Wisconsin Senate on the motion of Senator Panzer, for Officer Daniel A. Zell, on the occasion of his retirement from the West Bend Police Department after 33 years of dedicated service.